ATTORNEY DOCKET NO.: 051480-5045

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Oskar DAUNER et al.)	Confirmation No: 6679
)	
Application No.: 09/856,321)	Group Art Unit: 3661
)	
Filed: November 19, 2001)	Examiner: T. Nguyen
)	
For: MOTOR VEHICLE COMMUNICATION)	
SYSTEM AND METHOD FOR EXCHANGING)	
DATA IN A MOTOR VEHICLE)	

United States Patent and Trademark Office
Customer Service Window
Mail Stop Appeal Brief-Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

APPELLANTS' BRIEF UNDER 37 C.F.R. § 41.37 TRANSMITTAL FORM

1. Transmitted herewith is an Appellants' Brief under 37 C.F.R. § 41.37, which is being submitted further to the Notification of Non-Compliance with 37 C.F.R. § 41.37 dated December 1, 2004, and the Notice of Appeal filed March 9, 2004.

2. Additional papers enclosed.

    [ ] Drawings: [ ] Formal   [ ] Informal (Corrections)
    [ ] Information Disclosure Statement
    [ ] Form PTO-1449, ___ references included
    [ ] Citations
    [ ] Declaration of Biological Deposit
    [ ] Submission of "Sequence Listing", computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence.

3. Oral Hearing Under 37 C.F.R. § 1.194

    [ ] Oral hearing is hereby requested.
    [ ] Fee under 37 C.F.R. § 1.17(d) is enclosed.

4. Extension of time

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

[X] Appellants petition for an extension of time, the fees for which are set out in 37 CFR 1.17(a), for the total number of months checked below:

Total months requested	Fee for extension	[fee for Small Entity]
☒ one month	$ 120.00	$ 60.00
☐ two months	$ 450.00	$ 225.00
☐ three months	$ 1020.00	$ 510.00
☐ four months	$ 1,590.00	$ 795.00
☐ five months	$ 2,160.00	$1,080.00

Extension of time fee due with this request: $120.00

5. Fee Payment

[ ] No fee is to be paid at this time.

[X] The Commissioner is hereby authorized to charge $ 120.00 for the extension of time fee under 37 CFR § 1.17(a)) to Deposit Account No. 50-0310.

[X] The Commissioner is hereby authorized to charge any additional fees which may be required, including fees due under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account 50-0310.

Respectfully submitted,
MORGAN, LEWIS & BOCKIUS

By: _____

Peter J. Sistare
Reg. No. 48,183

Dated: February 1, 2005

CUSTOMER NO. 009629
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-3000

ATTORNEY DOCKET NO.: 051480-5045

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Oskar DAUNER et al.)	Confirmation No: 6679
)	
Application No.: 09/856,321)	Group Art Unit: 3661
)	
Filed: November 19, 2001)	Examiner: T. Nguyen
)	
For: MOTOR VEHICLE COMMUNICATION)	
SYSTEM AND METHOD FOR EXCHANGING)	
DATA IN A MOTOR VEHICLE)	

United States Patent and Trademark Office
Customer Service Window
Mail Stop Appeal Brief-Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

APPELLANTS' BRIEF UNDER 37 C.F.R. § 41.37

This brief is response to the Notification of Non-Compliance with 37 C.F.R. § 41.37

dated December 1, 2004, and in furtherance of the Notice of Appeal, which was filed in the

above-identified patent application on March 9, 2004.

The period for filing this brief extends through February 1, 2005 by a one-month

extension of time petitioned for herein. The fee required under 37 C.F.R. § 1.17(c) was filed

filed on October 4, 2004.

1. The Real Party in Interest

The real parties in interest in this appeal are Siemens Aktiengesellschaft of

München, Germany and Daimler Chrysler AG of Stuttgart, Germany.

2.   **Related Appeals and Interferences**

Appellants are not aware of any other appeals or interferences that will

directly affect, or be directly affected by, or have a bearing on the Board's decision in

the appeal.

3.   **Status of Claims in Application**

The status of the claims is as follows:

Claims canceled: none.

Claims pending: 1-11.

Claims allowed: none.

Claims rejected: 1-11.

The claims on appeal are 1-11.

4.   **Status of Amendments**

Appellants filed an Amendment and Request for Reconsideration under 37

C.F.R. § 1.116 on February 9, 2004 in response to the Final Office Action dated

September 9, 2003 (Paper No. 10). Entry of this Amendment and Request for

Reconsideration under 37 C.F.R. § 1.116 was denied in the Advisory Action (Paper

No. 11) dated March 17, 2004. Appellants note that the Amendment and Request for

Reconsideration under 37 C.F.R. § 1.116 did not include any amendments to the

claims. Although denied entry, the Examiner indicated that the Request for

Reconsideration under 37 C.F.R. § 1.116 "has been considered but does not place the

application in condition for allowance. . ."

5.   Summary of the Claimed Subject Matter

Appellants' invention relates generally to a vehicle communication system and a method for exchanging data in a vehicle, in which data is exchanged between a plurality of different data sources that are connected to a processor unit, and a plurality of operator consoles that are connected to the processor unit. The communication system is used for carrying out applications, functions and services. As described at page 6, line 6 – page 7, line 2, and illustrated in Fig. 1 of Appellants' specification, a vehicle communication system according to a preferred embodiment includes a processor unit 1 connected by a data bus 12 to a plurality of different data sources. The data sources may include, for example, a navigation unit 2, an audio system 4 for outputting audible signals, a tuner 5 for receiving radio signals or television signals, a playback device for DVD and CD media, an interface 7 for connecting to a portable computer, a mobile telephone module 8, or a locating module 11 that includes a GPS receiver, a gyroscope and a distance meter. A plurality of operator consoles 9 are also connected to the processor unit 1 by the data bus 12. Each operator console 9 has a user interface that may include, for example, a keyboard, a trackball, a microphone for voice recording or as input means for a voice-operated system, a loudspeaker, a headset, or a display device.

As described at page 7, ll. 11-25, a central system controller 17, an operator console controller 20 and a priority management system 19 are implemented with the processor unit 1. The priority management system 19 includes modules that are functionally assigned to the central system controller 17 and modules that are functionally assigned to the operator console controller 20. By means of the priority

management system 19, each operator console 9 can be allocated an access priority

with respect to the individual applications. Thus the invention provides, for example,

that the operator console of the vehicle driver may be allocated the highest priority for

access to the navigation system, while the operator console of the vehicle driver may

be denied access to the television receiver. *See* page 3, ll. 25-30. In addition, the

priority management system 19 controls access of the individual applications to the

data bus 12 and to the individual operator consoles 9. Thus the priority management

system 19 may allow access to the bus for a high-ranking application, such as a traffic

jam warning for the driver, while one or more low ranking applications are terminated

or their data transmission is reduced. In this manner, the priority management system

19 prevents overloading of the data bus 12. *See* page 8, ll. 6-22.

Independent Claim 1

With respect to claim 1, as described beginning at page 7, line 11, and

illustrated in Figs. 1-3, an exemplary communication system includes at least one

processor unit 1 arranged in the vehicle for controlling applications 15, a plurality of

different data sources 2, 4, 5, 6, 8 which are connected to the processor unit, a plurality

of operator consoles 9 which are connected to the processor unit and have user

interfaces 22 for accessing the applications and for data playback, and a central system

controller 17 having a priority management system 19 which allocates to the individual

operator consoles access rights with different degrees of priority to the applications.

<u>Independent Claim 10</u>

With respect to claim 10, as described beginning at page 7, line 11, and illustrated in Figs. 1-3, an exemplary method for exchanging data in a vehicle, in which at least one processor unit 1 and a plurality of data sources 2, 4, 5, 6, 8 communicate with operator consoles 9 via a data bus 12, includes different applications 15 being controlled by the processor unit so that they output onto different output devices 21, access rights to the applications being allocated to the operator consoles, and access rights with different degrees of priority to the applications being allocated to the individual operator consoles.

6.   Grounds of Rejection to be Reviewed on Appeal

The rejections at issue are as follows:

Claims 1-4 and 7-9 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,023,232 to Eitzenberger ("Eitzenberger").

Claims 10 and 11 are rejected under 35 U.S.C. § 102(e) as being anticipated by Eitzenberger.

Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Eitzenberger in view of U.S. Patent No. 5,960,035 to Sridhar et al. ("Sridhar").

7.   Arguments

<u>The Rejection of Claims 1-4 and 7-9 under 35 U.S.C. § 102(e)</u>

<u>Claims 1-4 and 7-9</u>

Appellants respectfully submit that claims 1-4 and 7-9 are allowable over the

applied prior art for at least the following reasons, and that the final rejection of claims

1-4 and 7-9 under 35 U.S.C. § 102(e), should be reversed.

As described at col. 4, line 27 – col. 5, line 20, Eitzenberger is directed to a

vehicle communications system having a central computer 1, a plurality of data

networking applications, and a plurality of individual devices connected with the

central computer 1. The applications include fleet management, route planning,

remote diagnosis, antitheft protection, and data communications such as the sending of

electronic mail. The devices include a GPS (Global Position System) receiver, a

mobile computer in the form of a PDA (personal digital assistant), a cellular telephone

(GSM-Global System for Mobile), a CD-ROM (Compact Disc-Read Only Memory)

unit, and an RDS-TMC (Radio Data Service-Traffic Message Channel) device.

Various interfaces are used to connect these devices to central computer 1, such as a

CAN (Controller Area Network), a PCMCIA (Personal Computer Memory Card

International Association), an RS232 connection, an IR connection, and a D2B

connection.

Data communication between the devices and central computer 1 takes place

over data transmission channels associated with the various interfaces. The devices are

not each associated with a specific application, but are called upon flexibly to fulfill

their functions by an adaptive application control that is integrated with the central

computer 1. The adaptive application control selects the most suitable device and the

corresponding communications channel for a desired purpose. Several applications

can use the same device for communication, with the adaptive application control

deciding which connection requirements take precedence, while connecting the corresponding communications channel to the device. As a result, the provision of redundant equipment on the vehicle, with identical devices for different data networking applications, can be avoided. Conversely, certain functions can be performed in a redundant fashion over different information channels. For example, determination of the current vehicle position can be performed by GPS, cellular phone, and/or a beacon system. *See* col. 7, ll. 33-47. As described at col. 7, line 65 – col. 8, line 4, the adaptive application control is also designed for performing a multiplex function in which several applications simultaneously access a communications device. This function includes prioritization of the applications and the interruptability of the various communications channels.

Independent claim 1 recites a communication system, including at least one processor unit in a vehicle for controlling applications, a plurality of different data sources connected to the processor unit, a plurality of operator consoles connected to the processor unit, and a central system controller. The central system controller includes a priority management system that allocates to the individual operator consoles access rights with different degrees of priority to the applications.

It is respectfully submitted that Eitzenberger fails to teach Appellants' invention for at least the following reasons.

Eitzenberger is completely silent with respect to the feature of individual operator consoles. Accordingly, Eitzenberger cannot teach or suggest the feature of a priority management system that allocates to the individual operator consoles access rights with different degrees of priority to the applications, as recited in claim 1. Even

if the devices of Eitzenberger, such as the GPS receiver, PDA, cellular phone, etc., were considered to teach the operator consoles of Appellants' invention, Eitzenberger still would not teach the feature of a priority management system that allocates to the individual operator consoles access rights with different degrees of priority to the applications, at least because the devices of Eitzenberger do not access the applications. The applications of Eitzenberger access the devices.

As pointed out in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim." Thus, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. Of California, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987)."

Claims 2-4 and 7-9 depend from claim 1 and recite the same combination of allowable features recited in independent claim 1, as well as additional features that define over the applied reference.

The Rejection of Claims 10 and 11 under 35 U.S.C. § 102(e)

Claims 10 and 11

Appellants respectfully submit that claims 10 and 11 are separately patentable from claims 1-4 and 7-9 at least because the claims are directed to different statutory classes of invention, *i.e.* method and apparatus, respectively.

Appellants respectfully submit that claims 10 and 11 are allowable over the applied prior art for at least the following reasons, and that the final rejection of claims 10 and 11 under 35 U.S.C. § 102(e), should be reversed.

Independent claim 10 recites a method for exchanging data in a vehicle, in which at least one processor unit and a plurality of data sources communicate with operator consoles via a data bus. The method includes different applications being controlled by the processor unit so that the applications output onto different output devices, and access rights with different degrees of priority to the applications being allocated to the individual operator consoles.

It is respectfully submitted that Eitzenberger fails to teach Appellants' invention for at least the following reasons.

As described above, Eitzenberger is completely silent with respect to the feature of individual operator consoles. Accordingly, Eitzenberger cannot teach the feature of access rights with different degrees of priority to the applications being allocated to the individual operator consoles, as recited in claim 10. Even if the devices of Eitzenberger, such as the GPS receiver, PDA, cellular phone, etc., were considered to teach the operator consoles of Appellants' invention, Eitzenberger still would not teach or suggest the feature of access rights with different degrees of priority to the applications being allocated to the individual operator consoles, at least because the devices of Eitzenberger do not access the applications. The applications of Eitzenberger access the devices.

As pointed out in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim." Thus, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. Of California, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987)."

Claim 11 depends from claim 10 and recites the same combination of allowable features recited in independent claim 10, as well as additional features that define over the applied reference.

The Rejection of Claims 5 and 6 under 35 U.S.C. § 103(a)

Claims 5 and 6

Appellants respectfully submit that claims 5 and 6 are allowable over the applied prior art for at least the following reasons, and that the final rejection of claims 5 and 6 under 35 U.S.C. § 103(a), should be reversed.

Sridhar is directed to an apparatus 200 for load balancing a computer processor 103 that operates a data communications program for data transmission and reception over a communications channel 105, concurrently with other applications programs. The apparatus includes a loading selector 205 for selection of a data transfer priority. Depending upon the data transfer priority selected by the user, the processor 103 has sufficient remaining availability for the concurrent operation of the other applications programs. *See* Abstract.

Claims 5 and 6 depend from claim 1 and recite the same combination of allowable features recited in independent claim 1, as well as additional features that define over the applied reference.

It is respectfully submitted that Eitzenberger in combination with Sridhar, fails to teach or suggest Appellants' invention for at least the following reasons.

Sridhar also does not teach or suggest the feature of a priority management system that allocates to the individual operator consoles access rights with different

degrees of priority to the applications, as recited in claim 1. Therefore, a combination

of Eitzenberger and Sridhar still fails to teach or suggest the combination of features

recited in Appellants' claims 5 and 6.

MPEP § 2143.03 points out that "[t]o establish prima facie obviousness of a

claimed invention, all the claimed limitations must be taught or suggested by the prior

art. In re Royka, 409 F.2d 981, 180 USPQ 580 (CCPA 1974)."

At least for the above-described reasons, Appellants respectfully assert that the

rejection under 35 U.S.C. §102(e), of claims 1-4 and 7-9, the rejection under 35 U.S.C.

§ 102(e), of claims 10 and 11, and the rejection under 35 U.S.C. § 103(a), of claims 5

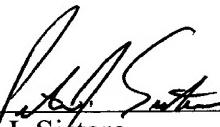and 6, should be reversed in whole.

*****

In view of the foregoing, Appellants respectfully request the reversal of the

Examiner's rejections and allowance of the pending claims. If there are any other fees

due in connection with the filing of this Appeal Brief, please charge the fees to our

Deposit Account No. 50-0310. If a fee is required for an extension of time under 37

C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee

should also be charged to our Deposit Account No. 50-0310.

Respectfully submitted,

MORGAN LEWIS & BOCKIUS LLP

Dated: February 1, 2005   By: _____
                                      Peter J. Sistare
                                      Registration No. 48,183

CUSTOMER NO. 009629
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-3000

8. Appendix A- Claims

1. (Previously Presented) A communication system which has:

at least one processor unit (1), arranged in the vehicle, for controlling

applications (15),

a plurality of different data sources (2, 4, 5, 6, 8) which are connected to the

processor unit (1),

a plurality of operator consoles (9) which are connected to the processor unit

(1) and have user interfaces for accessing the applications (9) and for data playback,

and

a central system controller (17) having a priority management system (19)

which allocates to the individual operator consoles (9) access rights with different

degrees of priority to the applications (15).

2. (Original) The vehicle communication system as claimed in claim 1,

characterized in that functions (16) which are implemented on the processor unit (1) or

on a data source (2, 4, 5, 6, 8) are assigned to the applications (15).

3. (Previously Presented) The vehicle communication system as claimed in claim

1, characterized by an operator console controller (20.1, 20.2) with which the

individual operator consoles (9) can be individually configured.

4.   (Original) The vehicle communication system as claimed in the preceding claim, characterized in that the priority management system (19) allocates to the applications (15) individual access rights to a data bus (12) and/or to the processor unit (1).

5.   (Original) The vehicle communication system as claimed in the preceding claim, characterized in that the priority management system (19) allocates to the applications (15) access to the data bus (12) as a function of the loading of the data bus (12) at that time.

6.   (Previously Presented) The vehicle communication system as claimed in claim 4, characterized in that when a defined load of the data bus (12) is reached or exceeded, at least one low-level application is aborted or its data transmission rate is reduced.

7.   (Previously Presented) The vehicle communication system as claimed in claim 4, characterized in that the access of an application (15) to the data bus (12) can be controlled as a function of the priority of the requesting operator console (9).

8.   (Previously Presented) The vehicle communication system as claimed in claim 1, characterized in that the operator console controller (20.1, 20.2) allocates individual access rights to the applications (15) for the access to an operator console (9).

9.   (Previously Presented) The vehicle communication system as claimed in claim

1, characterized in that a user interface (22) of an operator console (9) can be

configured individually by the operator console controller (20.1, 20.2).

10.   (Original) A method for exchanging data in a vehicle, in which at least one

processor unit (1) and a plurality of data sources (2, 4, 5, 6, 8) communicate with

operator consoles (9) via a data bus (12),

different applications (15) being controlled by the processor unit (1) so that

they output onto different output devices (21),

access rights to the applications (15) being allocated to the operator consoles

(9),

access rights with different degrees of priority to the applications (15) being

allocated to the individual operator consoles (9).

11.   (Original) The method as claimed in the preceding claim, characterized in that

an operator console controller (20.1, 20.2) controls one or more of the following

functions individually for an operator console (9):

user prompting at the man/machine interface,

assignment of running applications or their menus to defined positions of a

display device,

assignment of the access right of applications to an output device of the

operator console.

9.   Appendix B- Evidence

No information is appended under this section.

10. Appendix C- Related Procedings

No information is appended under this section.